IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 313 OF 2006

1. Fr. Joaquim Fernandes,
son of Sebastian Fernandes,
age 65 years, Chairman of
Tribal Movement for Social
Justice, resident of Molar,
Utorda, Salcete, Goa.

2. Gomantak Adivasi Sanghatana
a registered Society, registered
under Societies Registration
Act, represented by its President
Shri Rajendra Kunkolienkar son
of Joao Manuel, age 54 years,
House No.44, Odxel, Talegao,
Tiswadi, Goa. ... Petitioners.

versus

1. Union of India,
Through the Secretary of the
Ministry of Home Affairs,
Government of India,
having its Office at North
Block, New Delhi.

2. National Commission for
Scheduled Tribe, having its
office at 6th floor, "B" wing,
Lok Nayak Bhavan, Khan market,
New Delhi - 110003.

3. The Secretary,
The Ministry of Tribal Affairs,
Government of India,
Shastri Bhavan, New Delhi.

4. State of Goa,
Through the Chief Secretary,
Government of Goa, having
his office at Secretariat,
Porvorim, Bardez-Goa.

5. The Secretary,
Department of Social Welfare,
Government of Goa, having his
office at Porvorim, Bardez, Goa.

6. The Director,
Directorate of Social Welfare,
Government of Goa, having his
Office at 18th June Road,
Panaji, Goa. ... Respondents

Mr. V. R. Tamba, Advocate for the Petitioners.

Mr. C. A. Ferreira, Assistant Solicitor General for the Respondent Nos.1 to 3.

Mr. S. S. Kantak, Advocate General for the Respondent Nos.4, 5 and 6.

CORAM : J. N. PATEL &
N. A. BRITTO, JJ.

DATE : 21ST NOVEMBER, 2006.

ORAL ORDER

Heard the learned Counsel for the Petitioners, the

learned Assistant Solicitor General for the Respondent Nos.1 to 3 and the learned Advocate General for the Respondent Nos.4 to 6. We are disposing of this petition at the admission stage.

2. The Petitioners have approached this Court for seeking a writ of mandamus to the Respondent No.4 to have a Tribal Department and to make available 12% quantified amount of funds from the Plan fund released to different line agency Departments for execution of development works under TSP so as to ensure its utilization as per the Maharashtra pattern of planning and execution of funds earmarked for Tribal Sub Plan areas. The other orders and directions sought are in the nature that Respondent No.1 should give grant in aid to the Respondent No.4 to permit the Scheme as envisaged under Article 275(1) of the Constitution of India for educational advancement of tribals as per its policy and to identify, demarcate and declare tribal areas and segments for the implementation of Tribal Sub Plan in these Tribal areas and for constituting Tribal Advisory Council for Tribal Areas with mix representatives of tribals and non tribals' social workers to advise the Respondent No.4 and monitoring various Schemes under TSP.

3. It is the case of the Petitioners that the Respondent No.4/State has not taken any steps pursuant to the Scheduled Castes and Scheduled Tribes Order passed by the Parliament and published in the Gazette of India, Extraordinary, Part II in respect of Tribal communities including Kunbi, Gawda and Velip as Scheduled Tribes for the State of Goa. Further, there is no provision for reservation of posts in the Employment of the State and its undertaking either as direct recruit or for the purpose of promotion for Scheduled Tribes and therefore they have sought that the State of Goa should adopt the Maharashtra Planning of execution of funds earmarked for Tribal areas effectively and meaningful implementation of the said plan to the benefit of Tribals.

4. The Petitioners were required to approach this Court after having made a representation to His Excellency the Governor of Goa for non implementation of the directions of Respondent No.1 issued under Article 339 of the Constitution which according to him amounts to failure of the Constitutional machinery and for that reason the Petitioners have approached

the Governor of Goa to recommend to the President of India to take over the State Administration by invoking Article 356 of the Constitution.

5. In response to the petition, the State has filed affidavit giving all the particulars and details of the steps taken by the State in the matter and have also placed on record that the State has acted on the guidelines issued by the Government of India, Ministry of Tribal Affairs for release and special assistance to the Tribal Sub Plan. It has been categorically stated that in so far as the State of Goa is concerned as there are no Tribal belts the State has identified tribal population by taking a census of which particulars are furnished in the affidavit filed by Respondent No.4 and accordingly they have taken steps to implement the policy for the benefit of Tribals by providing and allocating funds and in accordance with the guidelines the special assistance released for development of the Tribes in following cases:-

a) Integrated Tribal Development Projects (ITDPs) are generally contiguous large areas of the size of one or more

Development Block in which the ST population is 50% or more of the total population.

b) Modified Area Development Approach(MADA): These are identified pockets with a concentration of tribals 50% or more ST population within a total population of a minimum of 10,000 persons and above.

c) Clusters: These are identified pockets of tribal concentration containing 50% or more ST population within a total population of about 5,000 or more.

d) Primitive Tribal Groups(PTGs): Identified isolated communities among the STs characterized by a low rate of population, a pre-agricultural level of technology and extremely low levels of literacy. (so far 75 Primitive Tribal Groups (PTGs) have been identified and listed in Annexure III).

e) Dispersed Tribal population outside (a), (b), (c) and (d) above.

6. We find that after this petition came to be filed the State has placed before us the necessary particulars and details in regard to implementation of various Schemes for benefit of Tribes. It has been specifically stated that there is no separate

Tribal Department constituted in the State of Goa and presently the same is looked after by the Social Welfare Department of the Government of Goa which is in accordance with the provisions made in the Fifth Schedule pursuant to Article 275(1) of the Constitution of India and it is in consonance with the Scheme framed by the Union of India for the purpose of promoting the welfare of the Scheduled Tribes in the State.

7. We are satisfied that appropriate steps have been taken by the State in the matter and the grievance of the Petitioners that the State machinery having failed to implement the Tribal Development Plan it has resulted in failure of Constitutional machinery appears to be misplaced probably for want of the required information which the Petitioners could have very well sought under the Right to Information Act. This Court appreciates the anxiety on the part of the Petitioners relating to the welfare of Tribals but the Petitioners should not be so reckless as to seek supersession of the State Administration by requesting the Governor of Goa to recommend to the President of India to take over the State Administration under

Article 356 of the Constitution of India which probably reflects ignorance on the part of the Petitioners in taking such a step.

8. The only question which requires consideration is that the State has failed to constitute Tribal Advisory Council as required under the Fifth Schedule of the Constitution of India.

9. The learned Advocate General informed the Court that the constitution of the Tribal Advisory Council is such that it cannot be constituted in such a short time and it will require some time but there is no explanation forthcoming from the State as to why it has failed to constitute such a Council well in advance as required under Article 244 of the Constitution of India. The learned Advocate General assures that State would take immediate steps to constitute such a Council so that it can advise on such methods pertaining to the welfare of Tribals in the scheduled areas and Scheduled Tribes in the State. This Court expects that the State would do well in the interest of the Tribals if a Tribal Advisory Council is constituted at least before the commencement of the next financial year.

10. The Petitioners were required to approach this Court probably because the concerned Department did not respond to their request.

11. We are informed by the learned Advocate General that the State has its own website and we will highly appreciate if the State places all its decisions and policies in respect of the various Schemes it has adopted in the interest and for the welfare of the Scheduled Tribes on its website so that it is accessible to all citizens and further takes steps to conduct necessary programmes in villages notified as scheduled areas which have substantial population of Scheduled Tribes so as to educate the Tribals in respect of the various Welfare Schemes available to them relating to Health care, education and so on and take steps so that it reaches the Tribals for whom it is meant. The legal aid programme taken up by the State can also go a long way in conducting such programmes in villages having scheduled areas and Scheduled Tribes population.

12. In view of the fact that the State has met all the basic requirements including allocation of funds nothing survives in

this petition except to monitor the implementation of these programmes. We expect the State to take cognizance of our observations as to the constitution of the Tribal Advisory Council. With this, we dispose of the petition as no further directions are required to be issued. The petition stands disposed of accordingly with no order as to costs.

J. N. PATEL, J.

N. A. BRITTO, J.

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